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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,617	02/27/2002	Israel Rozenboim	293.00050101	7945
26813	7590	12/02/2003	EXAMINER	
MUETING, RAASCH & GEBHARDT, P.A. P.O. BOX 581415 MINNEAPOLIS, MN 55458			SHAW, ELIZABETH ANNE	
		ART UNIT		PAPER NUMBER
		3644		

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	<b>Attentant(s)</b> <del>ROZENBOIM, ISRAEL</del>
	10/087,617	
	Examiner Elizabeth A. Shaw	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 12 September 2003.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-6,8,11-20,22-33,35-47 and 49-56 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 1-6,8,11,24-33,35,38 and 51-56 is/are allowed.
- 6)  Claim(s) 12-15,17,18,20,22,23,36,37,39-42,44,45,47,49 and 50 is/are rejected.
- 7)  Claim(s) 16, 19, 43, 46 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a)  The translation of the foreign language provisional application has been received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

<ol style="list-style-type: none"> <li>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.</li> </ol>	<ol style="list-style-type: none"> <li>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</li> <li>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6) <input type="checkbox"/> Other: _____.</li> </ol>
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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 17, 18, 20, 22, 23 36, 37, 39-42, 44, 45, 47, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Schonberg (4,625,728). Schonberg teaches a method of exposing poultry to monochromatic light to affect the behavior and life cycles of the poultry. Regarding claims 14, 15, 23, 37, 41, 42 and 50; Schonberg discloses an exposure period of 8-9 hours which is considered to be "at least 3 minutes" and "at least 15 minutes". Regarding claims 17, 18, 22, 23, 36, 37, 44, 45, 49 and 50; Schonberg discloses the monochromatic light having a wavelength band of 400-600 nanometers and a peak wavelength of about 544 nanometers.

### ***Allowable Subject Matter***

Claims 16, 19, 43 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-6, 8, 11, 24-33, 35, 38 and 51-56 are allowed.

### ***Response to Arguments***

Applicant's arguments filed Sept. 12, 2003 have been fully considered but they are not persuasive. The characteristics of increasing a bird's body weight, muscle

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weight and decreasing the mortality rate of the birds exposed to the differing phases of monochromatic light are not considered to be novel. Schonberg does not disclose the use of monochromatic light exposure for these particular characteristics, but simply by observing the growth rate of the birds so exposed, one can see and infer that their general health has improved which would include characteristics of increased body weight/mass and lessening of the mortality rate.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

December 1, 2003

*Elizabeth Shaw*

Elizabeth A. Shaw  
Examiner  
Art Unit 3644